

Appl. No. 10/022,016
Amendment After Final filed March 30, 2004
Reply to Office Action Mailed December 30, 2003

REMARKS

Status of the Claims

Claims 1-20, 22-23, 25-35, and 37-38 are currently pending after entry of this amendment. Claims 1-38 stand rejected. Claims 1, 22, and 35 have been amended. Claims 21, 24, and 36 have been cancelled. Entry and consideration of these amendments is respectfully requested.

Support for Amendments

No new matter is believed to have been added by these amendments.

Support for the amendment to claims 1, 22, and 35 can be found in original claims 21, 24, and 36. For convenience of discussion, this amended element may be referred to herein as "vacuum sealing" without intending this reference to limit the interpretation of this claimed element.

Rejections Under 35 U.S.C. § 103(a)

1. Claims 1, 3, 4, 6, 10, 13, and 19-21

Claims 1, 3, 4, 6, 10, 13, 19-21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Focke, et al., U.S. Pat. No. 5,513,748 (hereinafter Focke) in view of Bray, et al., U.S. Patent No. 6,164,444 (hereinafter Bray). Applicants submit that this rejection is overcome by the present amendments.

The Examiner asserts that it would have been obvious to one of skill in the art to provide the package of Focke with a sealing layer over each opening as taught by Bray in order to ensure the freshness of the contents. Applicants submit that combining the paper container of Focke with the sealing layers as provided in Bray does not achieve the invention as presently claimed by independent Claim 1.

Independent Claim 1 has been amended to include an internal space, that when sealed by the sealing layers, is at an internal pressure of less than atmospheric (referred to herein for convenience as "vacuum sealing"). This feature is neither taught nor suggested by the combination of Focke and Bray. The Examiner has

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acknowledged that the package of Focke-Bray does not expressly disclose an internal space at less than atmospheric pressure. However, the Examiner asserts that it would have been obvious to one of ordinary skill in the art to provide the package of Focke-Bray with internal spaces at a pressure less than atmospheric since it was known in the art that sealing a container at less than atmospheric pressure extends the shelf life of the product. Applicants respectfully disagree that it would be obvious to modify the package of Focke-Bray with "vacuum sealing" to achieve the invention claimed in independent Claim 1.

Focke teaches a hinge-lid pack assembly made from thin cardboard, col. 5, line 47. Focke further teaches that the cardboard pack is constructed from a one-piece common blank, col. 2, line 48, which is folded into the finished package. Likewise, Bray teaches a package constructed of a rigid card pack. The opening of the package is covered by a label which is resealable to open and close the pack. Neither Focke nor Bray teaches a package that would be capable of being sealed at and maintaining an internal pressure less than atmospheric. The porosity of the cardboard material and/or the conventional non-hermetic sealing of the overlapping cardboard edges would make it difficult if not impossible to achieve and maintain such internal conditions. Therefore, it would not have been obvious to one of ordinary skill in the art to combine the teachings of Focke and Bray and modify their package materials to create a package that would maintain an internal space with a "vacuum seal." Indeed, applicants submit that the use of previous card board pack by Focke and Bray teaches away from "vacuum sealing." Accordingly, Applicants respectfully request this rejection be withdrawn.

2. Claims 2, 22-24, 26, 27, 30, 33 and 34.

Claims 2, 22-24, 26, 27, 30, 33 and 34 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Focke in view of Bray and further in view of Clemens, U.S. Patent No. 3,007,623. These rejections have been obviated by the current amendments to independent claims 1 and 22.

Independent Claims 1 and 22 have been amended to include an internal space, that when sealed by the sealing layers, is at an internal pressure of less than

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atmospheric. As discussed above, it would not have been obvious to one of ordinary skill in the art to combine the teachings of Focke and Bray to obtain a "vacuum sealed" package because neither reference would have been able to achieve and maintain a vacuum seal due to the porosity of the cardboard blanks from which they are formed. Furthermore, Clemens, like Focke and Bray, is also constructed from a cardboard blank. Clemens does not provide the needed teachings and motivation or suggestion to include vacuum sealing which Focke and Bray lack. Therefore, Applicants respectfully request the rejection be withdrawn.

3. Claims 25, and 35-38

Claims 25, and 35-38 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Focke-Clemens-Bray as applied to claim 22 above, and further in view of Keaveney et al., U.S. Patent No. 5,938,018. This rejection has been obviated by the current amendments to independent claims 22 and 35.

Independent Claims 22 and 35 have been amended to include an internal space, that when sealed by the sealing layers, is at an internal pressure of less than atmospheric. As discussed above, it would not have been obvious to one of ordinary skill in the art to combine the teachings of Focke, Clemens, and Bray to obtain a "vacuum sealed" package because none of the references, alone or in combination, would have been able to achieve and maintain a vacuum seal due to the porosity of the cardboard blank from which they are formed. Furthermore, Keaveney does not provide the needed teachings and motivation or suggestion to include vacuum sealing which Focke, Clemens, and Bray lack. Therefore, Applicants respectfully request the rejection be withdrawn.

4. Claims 1-7, 10, 12, 14, 15, 19, and 20

Claims 1-7, 10, 12, 14, 15, 19, and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Moore, U.S. Patent No. 2,185,604 in view of Focke, Clemens, and Allen et al., U.S. Patent No. 4,026,063. These rejections have been obviated by the current amendments to independent claim 1.

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Claim 1 has been amended, as discussed above include an internal space which is sealed so that it has an internal pressure of less than atmospheric. Even if appropriate, the combination of Moore-Focke-Clemens-Allen does not teach or suggest every element of the claims as amended. The Examiner has pointed to no aspect of these references that would teach the vacuum sealing limitation. Therefore, Applicants respectfully request the Examiner to withdraw this rejection.

5. Claims 8, 9, 17, 18, 22, 28, 29, 31, and 32

Claims 8, 9, 17, 18, 22, 28, 29, 31, and 32 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Moore, Focke, Clemens, Allen as applied to claim 1 above, and further in view of Dula, U.S. Patent No. 1,253,219. These rejections have been obviated by the current amendments to independent claims 1 and 22.

Claims 1 and 22 have been amended, as discussed above include an internal space which is sealed so that it has an internal pressure of less than atmospheric. Even if appropriate, the combination of Moore-Focke-Clemens-Allen does not teach or suggest every element of the claims as amended. The Examiner has pointed to no aspect of these references that would teach vacuum sealing. Furthermore, Dula does not provide the motivation to include the vacuum sealing that Moore, Focke, Clemens and Allen lack. Specifically, Dula teaches a cardboard or paper pack that is pervious to air and does not teach or suggest a pack that would be able to achieve or maintain a seal as claimed by the current application. Therefore, Applicants respectfully request the Examiner to withdraw this rejection.

6. Claims 11, 13, and 16

Claims 11, 13, and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Moore, Focke, Clemens, Allen as applied to claim 10 above, and further in view of Keaveney. These rejections have been obviated by the current amendments to independent claim 1. As discussed above, none of the references cited by the Examiner provide the motivation to include vacuum sealing, nor would one of ordinary skill in the art combine such references to create a package with an internal space with an internal pressure of less than atmospheric. The use of porous material

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for the outer package teaches away from the claimed element of the current claims.
Therefore, Applicants respectfully request the Examiner withdraw this rejection.

CONCLUSION

Applicants believe they have completely addressed all the rejections raised by the Examiner. Applicants believe that all the claims are in condition to be allowed and respectfully request the same. If, for any reason, the Examiner feels that the above amendments and remarks do not put the claims in condition for allowance, the undersigned attorney can be reached at (312) 321-4787 to resolve any remaining issues.

Respectfully submitted,


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